UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

R.H., by his guardian and next friend, RATHEL HOUSEWIRTH, *et al.*,	)	
Plaintiffs,	)	No. 16-cv-1234
v.	)	JURY TRIAL DEMANDED
CITY OF ANNA, ILLINOIS, an Illinois municipal corporation,	)	
Defendant.	)	

PLAINTIFFS' MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiff R.H., by and through his legal guardian Rathel Housewirth, and Plaintiff RAVE, Inc. ("RAVE") seek a preliminary injunction that directs Defendant City of Anna, Illinois ("City") to issue a special use permit to RAVE so that it may proceed with its plan to construct and operate a group home for individuals with disabilities. As demonstrated below, Plaintiffs have a substantial likelihood of success on the merits of their claims that Defendant's conduct violates the federal Fair Housing Amendments Act of 1988 ("FHAA"), 42 U.S.C. § 3601-3631, the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12131, *et seq.*, and Section 504 of the Rehabilitation Act of 1974 ("Section 504"), 29 U.S.C. § 794(a). Without the requested relief, Plaintiffs will suffer immediate and irreparable harm.

FACTS

RAVE, a nonprofit agency located in Union County, Illinois, provides vocational and residential services to adults with developmental disabilities. (Griffith Decl. ¶ 1.) RAVE currently provides residential services to approximately sixteen individuals in three existing group homes just outside the city limits of Jonesboro, Illinois. *Id.* ¶ 7. Many of RAVE's group home residents are developmentally disabled and require assistance from RAVE staff to perform activities of daily living. *Id.* ¶ 5. Due to their severe disabilities and the level of support they require, RAVE's group home residents have very few, if any, residential alternatives. *Id.* ¶ 8.

In January 2016, RAVE purchased two parcels of real estate in Anna, Illinois for the purpose of developing two new group homes that would each house four adult persons with developmental disabilities. *Id.* ¶ 10. The parcel that is relevant to this lawsuit is located at 418/420 W. Davie Street ("Davie Street"), Anna, Illinois 62906. The Davie Street property is located in an area zoned for one and two-family dwellings. *Id.* ¶ 12. The home is designed to resemble other single-family residences and would blend in with the surrounding neighborhood. *Id.* ¶ 21 and Ex. A[1]. There will not be any signs or additional structures on the property that might suggest that the home is anything other than a single-family residence. *Id.*

RAVE anticipated some of the current residents from one of its other group homes, referred to as the Peachtree home, would move into the new group home in Anna. *Id.* ¶ 10. The Peachtree home is located on the outskirts of Jonesboro, Illinois. *Id.* ¶ 9. The home is located near a busy highway where there are no sidewalks, so it is not safe for residents to leave the Peachtree premises. *Id.* ¶ 29. Further, there are no stores or amenities nearby. *Id.* In addition, the Peachtree home is in need of extensive repairs. *Id.* ¶ 28. In order to make these repairs, the Peachtree residents must be relocated. *Id.* RAVE wishes to make these repairs as soon as possible in order not to jeopardize its CILA license. *Id.* ¶ 28. Furthermore, the current residents wish to move out of the Peachtree home and into a more modern home that is closer to the community in which they work. *Id.* ¶ 29.

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[1] All exhibits cited herein are attached to the Declaration of Gary Griffith and will be cited as "Ex. __."

All of the proposed residents of the Davie Street home intend to live together as a family unit, sharing meals and recreational and leisure activities. Ex. A. All of the proposed residents will continue to work at the sheltered workshop operated by RAVE. *Id.* All residents of the proposed group home intend for this to be their permanent home. *Id.* Specifically, Plaintiff R.H. was selected by RAVE to live at the Davie Street home. (Housewirth Decl. ¶ 15.) R.H. is a 46 year old, developmentally disabled male who lives in RAVE's Peachtree group home. *Id.* ¶¶ 3, 4, and 16. Because of his disability, R.H. is unable to reliably cook, dress, bathe, schedule and administer medications, or make basic decisions for himself without assistance. *Id.* ¶ 4. Because he is not able to live independently, R.H. has participated in RAVE's supported housing program for over nine years. *Id.* ¶ 11. R.H. is especially eager to move to the Davie Street home because he wants to live closer to his work and his friends who live in Anna. *Id.* ¶ 15.

The Zoning Dispute

On or about February 12, 2016, RAVE submitted a building permit application to the City in order to begin construction on the Davie Street home. (Griffith Decl. ¶ 14.) RAVE's permit application was on the City Council meeting agenda on February 16 and March 1, 2016, but the Council failed to take a vote each time, even though a quorum was present. *Id.* ¶ 15. Although no vote was held, each Council meeting began with an opportunity for public comment. *Id.* During these periods of public comment, members of the community voiced opposition to RAVE's permit applications. *Id.*

Public opposition to the group home came as a surprise to RAVE's CEO, Gary Griffith. *Id.* ¶ 19. Prior to RAVE's purchase of the lot, the Davie Street property had been a nuisance for many years. *Id.* ¶ 13. The former property was dilapidated and had been used as a multi-family dwelling. *Id.* Mr. Griffith also knew of at least one other group home located in an R-2 neighborhood that had not been required to obtain a special-use permit. *Id.* ¶ 19.

On April 5, 2016, the City Council voted unanimously to deny the building permit application. *Id.* ¶ 16. Mr. Griffith contacted the City Attorney, John Foley, who informed him that RAVE had to obtain a special use permit for the lot since it was located in an R-2 district. *Id.* On June 3, RAVE filed a special-use permit application, including a request for a reasonable accommodation, for the property on Davie Street. *Id.* ¶ 20.

On July 18, 2016, the Zoning Board of Appeals ("Board") held a public hearing on Plaintiff's special-use permit application. *Id.* ¶ 21. Neighbors of the proposed group home spoke again in opposition to RAVE's application and made remarks that suggested that resident opposition was motivated by discriminatory attitudes and biases against people with disabilities. *Id.* ¶ 22. The objections were virtually the same as those stated during the public comments sessions at the previous City Council meetings. For example, one resident testified that she did not want a developmentally disabled person as a next-door neighbor because she believes that disabled people can be noisy and she believes that group homes would adversely affect property values and change the "character" of the neighborhood. *Id.* Another resident stated that she did not want a group home next door, without explanation. *Id.* A third resident raised concerns that the residents of the group home might be sexually dangerous and also voiced concerns about additional traffic that the group home would generate. *Id.*

In response to these objections, Mr. Griffith advised the Board that, as specified in the special use permit application, no registered sex offenders would be allowed to live in the group home. *Id.* ¶ 23. Mr. Griffith also told the Board that all of the would-be-residents had been RAVE clients for years and none of them would be a nuisance or danger to the community. *Id.*

Mr. Griffith also advised the Board that one bus would transport the residents to work in the morning and one bus would return in the afternoon, so there would be no traffic congestion. *Id.*

At the conclusion of the hearing, the Board unanimously voted to recommend denial of RAVE's special-use permit application. Ex. B. Following the meeting, the Board issued a written statement of its findings in support of its recommendation to deny RAVE's request. *Id.* In recommending that RAVE's special use permit application be denied, the Board found that "interested citizens from the affected neighborhood unanimously oppose the requested zoning modification, believing it would undermine the intended R-2 use of property." *Id.* The Board did not elaborate on how exactly the "intended R-2 use of property" would be undermined or whether residents' beliefs in this regard were supported by any legitimate evidence. *Id.* The findings made no mention of any burden, costs, or inconveniences that the City or neighborhood residents would endure as a result of RAVE opening a group home in this particular location. Nor did the Board's decision address RAVE's request for a reasonable accommodation.

Instead, the Board simply found that RAVE "knew, or should have known" about the City's zoning requirements when it purchased the property and that there were "numerous other sites located within the City" where RAVE could have located. *Id.* On the basis of these paltry findings, the Board recommended that RAVE's request be denied. *Id.* The Board's recommendation to deny RAVE's special-use permit and request for a reasonable accommodation was then referred to the City Council. (Griffith Decl. ¶ 25.) Finally, after some delay, on September 20, 2016, the City Council voted to go into executive session. *Id.* ¶ 26. Upon returning to public session and without any public discussion, the City Council unanimously voted, without explanation, to deny the special-use permit. *Id.*

ARGUMENT

I. Legal Standard for Preliminary Injunctive Relief

In the Seventh Circuit, a party seeking preliminary injunctive relief "must demonstrate a reasonable likelihood of success on the merits, no adequate remedy at law, and irreparable harm absent the injunction." *Planned Parenthood of Ind., Inc. v. Comm'r of the Ind. St. Dep't of Health,* 699 F.3d 962 (7th Cir. 2012); *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 619 (7th Cir. 2004). If the moving party makes this threshold showing, the district court must weigh the balance of harm to the parties if the injunction is granted or denied and also evaluate the effect of an injunction on the public interest. *Id.* "The more likely it is that [the moving party] will win its case on the merits, the less the balance of harms need weigh in its favor." *Planned Parenthood of Indiana, Inc.*, 699 F. 3d at 972 (citing *Girl Scouts of Manitou Council, Inc. v. Girl Scouts of U.S., Inc.*, 549 F. 3d 1079, 1100) (7th Cir. 2008)). The City has clearly violated federal anti-discrimination statutes; thus, if this case proceeds to trial, Plaintiffs are highly likely to succeed on their claims. Every day that goes by, Plaintiff R.H. is denied the right to live in the community of his choice, simply because of his disability. Moreover, the City's refusal to issue a building permit to RAVE prevents RAVE from fulfilling its highly commendable mission to serve the needs of individuals with disabilities in an integrated, community-based setting. These harms are irreparable and cannot be cured absent immediate injunctive relief.

A. Plaintiffs Are Likely to Succeed on the Merits

At its core, this case involves the right of persons with disabilities to live where they choose. The Fair Housing Act ("FHA") was enacted to "provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C. § 3601. In 1988, Congress adopted the Fair Housing Amendments Act ("FHAA") to extend to individuals with disabilities the federal guarantee of equal housing opportunities. 42 U.S.C. § 3604(f). Similarly, in adopting the ADA, Congress noted that "historically, society has tended to *isolate and segregate* individuals with disabilities" and asserted that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, *independent living*, and economic self-sufficiency for such individuals." 42 U.S.C. § 12101 (emphasis added).

To this end, the FHAA provides that it shall be unlawful to "discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap" of any person who intends to reside in the dwelling. 42 U.S.C. § 3604(f)(1). Furthermore, the FHAA makes it illegal to "discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap" of any person who intends to reside in the dwelling after it is made available. 42 U.S.C. § 3604(f)(2).

The FHA defines "handicap" as "a physical or mental impairment which substantially limits one or more of such person's major life activities…." 42 U.S.C. § 3602(h). Plaintiff R.H. has been diagnosed with mental retardation and clearly meets this definition. Furthermore, discrimination against non-profit organizations that provide housing to disabled individuals is also strictly prohibited. 42 U.S.C. § 3602(d) (defining "person" as "one or more individuals, corporations, [or] partnerships . . ."). As such, RAVE has standing to bring this action. *Baxter v. City of Belleville*, 720 F. Supp. 720, 727-31 (S.D. Ill. 1989).

Under the FHAA, unlawful discrimination also includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f)(3)(B). Courts have repeatedly affirmed that the FHAA applies to municipal zoning ordinances that would restrict the placement of group homes. *See e.g., Oconomowoc Residential*

Programs, Inc. v. City of Milwaukee, 300 F.3d 775, 782 (7th Cir. 2002); *Wis. Cmty. Servs., Inc. v. City of Milwaukee*, 465 F.3d 737, 750 (7th Cir. 2006) (*en banc*).

1. **The City's refusal to grant RAVE a special use permit amounted to a discriminatory action in violation of the FHAA, the ADA, and the Rehabilitation Act[2]**

Discriminatory action under the FHAA may be shown in three ways: 1) by proof of discriminatory intent; 2) by evidence demonstrating that a defendant's actions had a disparate impact on the select group; or 3) by a showing that a defendant failed to make a reasonable accommodation. *See Bloch v. Frischholz*, 587 F.3d 771, 784 (7th Cir. 2009); *Good Shepherd Manor Fdn., Inc. v. City of Momence*, 23 F.3d 557, 561 (7th Cir. 2003); *Dadian v. Vill. of Wilmette*, 269 F.3d 831, 837-38 (7th Cir. 2001). Each scenario is present in this case.

a. Discriminatory Intent

In the instant case, the question with respect to intentional discrimination is whether Plaintiff R.H.'s disability, or RAVE's association with individuals with disabilities, was a "motivating factor" in the City's decision to deny RAVE the right to locate a single-family home for four disabled adults in a district zoned for single-family and two-family homes. *See Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Plaintiffs may prove their case via either direct or circumstantial evidence. *Kormoczy v. Sec'y, U.S. Dep't of Housing and Urban Dev.*, 53 F.3d 821, 824 (7th Cir. 1995). Plaintiffs, however, need not show that the challenged action was motivated solely by discriminatory purposes because "rarely can it be said that a legislature or administrative body operating under a broad mandate made a decision motivated solely by a single concern, or even that a particular purpose was the 'dominant' or 'primary one.'" *Arlington Heights*, 429 U.S. at 265-66.

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[2] Due to the similarities between the statutes regarding protections for individuals with disabilities related to housing, courts generally interpret and apply the anti-discrimination provisions in each of the statutes in the same way, with only minor differences that are mostly irrelevant here. *See e.g.*, *Oconomowoc*, 300 F.3d at 782; *Wis. Cmty. Servs.*, 465 F.3d at 746 (discussing the overlap and minor variations between the statutes, while noting that "[a]ll three statutory schemes embrace the concept that, in certain instances, the policies and practices of covered entities must be modified to accommodate the needs of the disabled."). Therefore, these statutes – the FHA, the ADA, and Section 504 – will be referred to interchangeably and generally as the "federal anti-discrimination statutes."

The City of Anna held three public hearings on RAVE's application to build a group home on West Davie Street. The comments made by residents during each of the hearings demonstrated that resident opposition was motivated by discriminatory attitudes and biases against people with disabilities. Residents voiced opposition based on stereotypes (i.e., disabled people are "noisy," "dangerous," and not good neighbors), baseless fears and speculations (i.e., that property values would be affected and a group home would undermine the "character" of the neighborhood), and illogical reasoning (i.e., that the group home would generate too much traffic). At each of the hearings, Gary Griffith, the CEO of RAVE, attempted to address resident concerns, but despite these assurances, residents continued to voice opposition based on discriminatory beliefs about people with disabilities at each hearing.

The FHAA "repudiates the use of stereotypes and ignorance, and mandates that persons with handicaps be considered as individuals. Generalized perceptions about disabilities and unfounded speculations about threats to safety are specifically rejected as grounds to justify exclusion." *Oconomowoc*, 300 F.3d at 786 (quoting H.R. Rep. No. 100-711 at 18 (1988), 1988 U.S.C.C.A.N. 2173, 2179). Of course, a municipality is not liable simply because a resident makes discriminatory comments. But when a municipality *takes action* based on resident opposition that is clearly motivated by discriminatory attitudes, as was the case here, the action may constitute intentional discrimination. When a municipality refuses to issue a permit "because of the expressed bias of residents, intentional discrimination would be shown." *North Shore-Chicago Rehab. Inc. v. Village of Skokie*, 827 F. Supp. 497, 507 (N. D. Ill. 1993). As stated in the Board's findings, resident opposition was one of the reasons the Board denied

RAVE's application. As such, the Board's actions amounted to intentional discrimination.

b. Disparate Impact

Defendant's actions also violated the federal anti-discrimination statutes because the zoning ordinance's exclusion of group living arrangements within single and two-family zoning districts has an adverse disparate impact on individuals with disabilities. In 2013, the United States Department of Housing and Urban Development ("HUD") adopted the Discriminatory Effects Rule ("Rule"), formalizing "HUD's long-held interpretation of the availability of 'discriminatory effects' liability under the [FHA], and [providing] nationwide consistency in the application of that form of liability." 78 FR 11460, Executive Summary; 24 CFR 100.500. The Rule defines "discriminatory effect" as a practice that "actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of [a] . . . handicap," 24 CFR 100.500(a), and seeks to establish a three-part burden-shifting test. Under the Rule, once a plaintiff proves that a challenged practice caused or predictably will cause a discriminatory effect, the burden shifts to the defendant to prove that the challenged practice is "necessary to achieve one or more substantial, legitimate, nondiscriminatory interests" of the defendant. *Id.* Even if the defendant satisfies its burden, the plaintiff may still prevail upon proving that the defendant's interests "supporting the challenged practice could be served by another practice that has a less discriminatory effect." *Id.* The Rule further states that a showing of discriminatory intent is not necessary to establish that a challenged practice has a discriminatory effect. *Id.*

The Seventh Circuit has not yet had the occasion to consider the burden-shifting approach adopted by HUD, but two other Circuits that have had the opportunity to address disparate impact claims under the FHA have adopted this approach. *See 6E Invs., LLC v. City of*

Yuma, 818 F.3d 493, 510 (9th Cir. 2016); *Inclusive Cmtys. Project, Inc. v. Tex. Dep't of Hous. & Cmty. Affairs*, 747 F.3d 275, 282 (5th Cir. 2014) (noting "Congress has given HUD authority to administer the FHA, including authority to issue regulations interpreting the Act.").

Historically, the Seventh Circuit has utilized a four-factor analysis to determine when conduct produces a discriminatory impact in violation of 42 U.S.C. § 3604. *See Metropolitan Housing Dev. Corp. v. Village of Arlington Heights*, 558 F. 2d 1283, 1290 (7th Cir. 1977). The four factors are: 1) the discriminatory effect of the challenged conduct; 2) the existence of "some evidence" that the defendant acted with discriminatory intent; 3) "the defendant's interest in taking the action complained of"; and 4) whether the plaintiff seeks to "compel the defendant to affirmatively provide housing" for members of a protected group or "merely to restrain the defendant from interfering with individual property owners who wish to provide such housing." *Arlington Heights*, 558 F. 2d at 1290-93. Under either approach, Plaintiff will prevail.

First, the City's zoning ordinance's exclusion of group living arrangements from the single and two-family zoning districts has a greater adverse impact on disabled persons than on non-disabled persons. Although some single, non-disabled adults may prefer group living arrangements for financial reasons, for disabled adults, like R.H., who cannot live independently, a group living arrangement is the *only* residential housing option they have because their disability makes it *impossible* for them to live independently. As such, disabled adults like R.H., are more likely than nondisabled adults to live with unrelated individuals. As court after court has acknowledged, group living arrangements are, therefore, absolutely "essential" for many disabled adults. *See e.g., Oconomowoc*, 300 F.3d at 787 ("Group living arrangements can be essential for disabled persons . . . and not similarly essential for the nondisabled."); *Good Shepherd Manor Found., Inc. v. City of Momence*, 323 F.3d 557, 562 (7th Cir. 2003) (noting that the argument that "developmentally disabled adults gain a specific benefit from group living" is "uncontested and well established in our case law."); *Brandt v. Village of Chebanse*, 82 F.3d 172, 174 (7th Cir. 1996) (recognizing that for groups of handicapped persons who seek to live together, either for mutual support or to permit full-time care by a staff, joint living arrangements are "essential.")

The City claims that it has "historically been receptive to the presence of group homes," such as the one proposed by RAVE, within its community and that its zoning ordinance is "neutral" and does not discriminate against people with disabilities. Ex. B. In fact, the zoning ordinance makes no explicit mention of group homes for the disabled. Under the City's zoning scheme, the only place that unrelated individuals may live together – other than a nursing home for the "infirm and chronically ill" – is in a "rooming house." (Compl. ¶¶ 7-9.) Rooming houses are not allowed in the R-1 and R-2 districts. Therefore, the zoning ordinance is not neutral. The City's ban on all group living arrangements from the R-1 and R-2 zoning districts effectively bars disabled adults who are unable to live on their own from the City's most desirable residential neighborhoods.[3] The zoning ordinance, therefore, disparately impacts individuals with disabilities and, thus discriminates against individuals with disabilities.

Second, as discussed above, there is more than "some evidence" that the City acted with discriminatory intent. The City offered no real explanation for its decision to deny RAVE's request other than the fact that residents, who voiced discriminatory attitudes, were opposed to the group home.

Third, the City of Anna cannot possibly have a reasonable and legitimate interest in

[3] As an aside, it is worth noting that it is permissible for any number of unrelated adults to live together in a single household, so long as they are the domestic servants of the head of household. The City of Anna is perfectly fine with households comprised of unrelated servants, but unwilling to tolerate the idea of four disabled adults living together as a common household in a district zoned for single or two-family dwellings.

excluding a single-family home comprised of four disabled adults from the R-2 district. The location of the property in question is zoned for one and two-family dwellings. Four individuals would occupy the single-family home that RAVE proposes to build. By right, RAVE could build a two-family dwelling on the property that could easily, and within the confines of the zoning ordinance, house 10-12 individuals or possibly even more. As such, the City's action cannot be justified based on concerns about density or overcrowding. In addition, none of the residents are able to drive, so traffic and parking certainly would not be a concern, nor has the City suggested it would be. One resident raised a concern that disabled people can be "noisy." Aside from the fact that this is an impermissible stereotype that should not have been given any credence by decision makers, such an objection amounts to nothing more than pretext, given the fact that a railroad is located right across the street from the lot in question.

Finally, the nature of the relief sought by Plaintiffs is simple and requires absolutely no action on the part of the City. Plaintiffs are not asking the City to build or subsidize housing for persons with disabilities nor are they requesting any special services from the City that would require any expenditure of public funds. Plaintiffs are simply asking that the four residents of this house – who seek to live together as a family household on a permanent basis – be afforded the right to live together in the neighborhood of their choice the same as any other family. The relief they seek is limited, namely the granting of a special use permit so that they may proceed with the construction of this new group home.

For the foregoing reasons, the City's zoning ordinance "actually or predictably results in a disparate impact on a group of persons or creates, increases, reinforces, or perpetuates segregated housing patterns because of [a] . . . handicap." 24 CFR 100.500(a). As such, Plaintiffs are also likely to succeed on the merits of their disparate impact claim.

Reasonable Accommodation

Finally, the federal anti-discrimination statutes require "a public entity to reasonably accommodate a disabled person by making changes in rules, polices, practices or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled." *Good Shepherd*, 323 F.3d at 561. "The FHAA requires accommodation if such accommodation (1) is reasonable, and (2) necessary, (3) to afford a handicapped person the equal opportunity to use and enjoy a dwelling." *Oconomowoc*, 300 F.3d at 783.

Whether a requested accommodation is reasonable or not is a highly fact-specific inquiry and requires balancing the needs of the parties. *Id.* An accommodation is considered reasonable if it is "both efficacious and proportional to the costs to implement it." *Id.* Conversely, a requested modification in the zoning context is deemed unreasonable "if it is so at odds with the purpose behind the rule that it would be a fundamental and unreasonable change." *Id.* (quoting *Dadian v. Village of Wilmette*, 269 F.3d 831, 838-39 (7th Cir. 2001)).

A plaintiff establishes that a requested accommodation is necessary by showing "that the desired accommodation will affirmatively enhance a disabled plaintiff's quality of life by ameliorating the effects of the disability." *Id.* (quoting *Dadian*, 269 F.3d at 838). In other words, the accommodation shall be deemed "necessary" if without it the plaintiff would be denied an "equal opportunity to obtain the housing of her choice." *Id.* The Seventh Circuit has interpreted the "equal opportunity" element to require not every conceivable modification that could be made, but rather "only accommodations necessary to ameliorate the effect of the plaintiff's disability so that she may compete equally with the non-disabled." *Wis. Cmty. Servs.*, 465 F.3d at 749. In the zoning context, the Seventh Circuit has noted that:

> '[E]qual opportunity' means the opportunity to choose to live in a residential neighborhood. The FHAA 'prohibits local governments from applying land use

> regulations in a manner that will …give disabled people less opportunity to live in certain neighborhoods than people without disabilities.' Often, a community-based residential facility provides the only means by which disabled persons can live in a residential neighborhood, either because they need more supportive services, for financial reasons, or both. **When a zoning authority refuses to reasonably accommodate these small group living facilities, it denies disabled persons an equal opportunity to live in the community of their choice.**

Oconomowoc, 300 F.3d at 784 (internal citations and quotations omitted) (emphasis added). Here, the requested accommodation was both reasonable and absolutely necessary to ensure that disabled adults, like R.H., have an equal opportunity to live in the neighborhood of their choice.

First, the requested accommodation is reasonable because it will undeniably serve R.H.'s desire to live in the neighborhood of his choice and RAVE's mission to provide residential services to disabled adults in a community-based, integrated setting. As discussed above, group homes are "essential" for many disabled adults because their disability makes it impossible for them to live independently.

The requested accommodation is also reasonable because it would not cost the City a penny. Once again, RAVE is not asking the City to build the residence or subsidize its construction in any way. RAVE has not made any requests for City services nor would a single-family dwelling comprised of four disabled adults have any negative impact on the surrounding community. Furthermore, an accommodation will not create a fundamental or unreasonable change in the City's ordinances. To be clear, RAVE is not seeking to build a group home that would accommodate 8-10 or even 16 people, as many group homes do. There will not be any accessory buildings to be used by staff and RAVE is not seeking any variances from the building codes. From all outside appearances, the residence will resemble a single-family home. Plaintiff's modest request is simply that four unrelated, disabled adults, who will be living together like a family, be treated like a family.

In denying RAVE's request, the City did not make a single finding that would suggest that RAVE's request was unreasonable or burdensome. Instead, the City argues that the zoning ordinance does not allow group living arrangements in the R-2 district and that there are "numerous other sites located in the City of Anna" where RAVE could locate. The City clearly misses the point. The FHAA's reasonable accommodation provision *mandates* that public entities make *changes* "in rules, polices, practices or services as is necessary to provide that person with access to housing that is equal to that of those who are not disabled." *Good Shepherd*, 323 F.3d at 561. "Because one of the purposes of the reasonable accommodations provision is to address individual needs and respond to individual circumstances, courts have held that municipalities must change, waive, or make exceptions in their zoning rules to afford people with disabilities the same access to housing as those who are without disabilities." *Oxford House, Inc. v. Babylon*, 819 F. Supp. 1179, 1186 (E.D.N.Y. 1993). The fact that the requested accommodation does not "follow the rules" does not make it unreasonable. Moreover, the assertion that there are other places where RAVE could establish a group home is unavailing. "Under the City's logic, a city could always prevail by showing that there were other locations available for the home to locate somewhere in the city. However, the FHAA does not only outlaw discrimination in the denial of all housing; it outlaws discrimination in the denial of particular dwellings." *United States v. City of Chi. Heights*, 161 F. Supp. 2d 819, 836 (N.D. Ill. 2001).

Second, the requested accommodation is necessary in order for Plaintiff R.H., and RAVE's other disabled clients, to have an equal opportunity to obtain housing in the neighborhood of their choice. Because the zoning ordinance bars group living arrangements in the R-1 and R-2 districts, disabled adults who cannot live independently are precluded from living in the majority of residential neighborhoods in the City. Without the accommodation, Plaintiff R.H. and his roommates will not have the opportunity to live in a neighborhood of their choice, in a family-like setting, *because of* their disabilities. Furthermore, without the accommodation, Plaintiff RAVE cannot fulfill its mission to provide integrated, community-based housing to people with disabilities. In enacting the FHAA, Congress sought to eliminate segregation in housing patterns among the disabled. 42 U.S.C. § 3604(f). Reasonable accommodations, such as the one requested by RAVE, are absolutely necessary to achieving this critical goal. For these reasons, Plaintiffs are highly likely to prevail on their reasonable accommodations claim.

B. The Harm is Irreparable and There Is No Adequate Remedy at Law

Plaintiffs can also easily demonstrate that irreparable harm is "likely" and not just a possibility if a preliminary injunction is not granted. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). The nature of the harm alleged in the Complaint is such that no plain, adequate or complete remedy at law exists to prevent or redress the actual and prospective injury, which is and will be suffered by Plaintiffs if an injunction is not issued.

Plaintiff R.H. is presently being denied the opportunity to live in the neighborhood of his choice *because of* his disability. The harm caused by the City's discriminatory actions is real and ongoing. R.H. currently lives in a group home in a rural setting, which does not offer easy access to any of the amenities R.H. enjoys. There are no sidewalks, stores, libraries, or parks. R.H. has been looking forward to moving into the City of Anna and cannot understand why he and the other group home residents have been the denied the right to live on Davie Street. Moreover, the home where he currently resides is in need of major repairs. In the near future, RAVE will have no choice but to close the home so that the repairs can be made. When that happens, Plaintiff R.H. will have no other place to live.

In addition, the City's discriminatory actions have caused Plaintiff RAVE to suffer an irreparable injury. RAVE's mission is to serve disabled individuals in an integrated, community-based setting. The City's actions have frustrated RAVE's mission. In the absence of preliminary relief, RAVE will not be able to serve its clients in an integrated, residential neighborhood. As discussed above, Congress enacted the FHAA to further this exact purpose.

The denial of Plaintiff R.H.'s right, under federal law, to be free from discriminatory actions that bar him from living in the community of his choosing cannot be remedied by monetary damages. He faces the prospective injury of being forced into institutional care if the Davie Street home cannot open due to the City's discriminatory actions. Likewise, the frustration of Plaintiff RAVE's mission has caused an irreparable injury, which cannot be cured by damages. *See Caron Found. of Fla., Inc. v. City of Delray Beach*, 879 F. Supp. 2d 1353, 1373 (S.D. Fla. 2012) ("Frustration of a rehabilitation provider's mission can cause irreparable harm."); *Stewart B. McKinney Found., Inc. v. Town Plan & Zoning Comm'n*, 790 F. Supp. 1197, 1208 (D. Conn. 1992) ("Monetary damages would not adequately compensate the plaintiff for its inability to achieve its purpose of providing housing . . ."). An award of monetary damages cannot fully rectify these harms, and any post-trial relief will come too late to avert the injuries certain to result from the City's actions. Immediate injunctive relief is necessary.

C. The Balance of Harms is in Plaintiffs' Favor

Plaintiffs can show that the harm they will suffer absent an injunction outweighs any harm the City might face if an injunction is granted. The City has failed to articulate *even a single harm* that it will suffer by granting Plaintiffs' request. In the Zoning Board of Appeals' findings in support of its recommendation to deny RAVE's request, the Board did not set forth a single harm that the Board anticipated might occur if RAVE's request was granted. The findings noted that "interested citizens from the affected neighborhood unanimously oppose the requested zoning modification, believing it would undermine the intended R-2 use of property," but this finding tells us little about whether the Board itself found this assertion to be true and, if so, why. The zoning ordinance offers no guidance on what the "intended R-2 use of property" should be – other than dictating that it should be comprised of single and two-family homes. It is hard to imagine how a single-family residence comprised of four disabled adults would "undermine" the City of Anna's zoning scheme. Conversely, the inevitable harms that Plaintiffs will suffer absent an injunction, outlined above, cannot be tolerated in a society that values the rights of disabled individuals to live in a neighborhood of their choosing.

D. A Preliminary Injunction Will Serve the Public Interest

More than twenty-five years ago, Judge William D. Stiehl decided that a preliminary injunction was warranted to permit the establishment of a hospice for HIV/AIDS patients in Belleville, in part because "the public interest can best be served if discriminatory actions based on irrational fears, piecemeal information and 'pernicious mythologies' are restrained." *Baxter v. City of Belleville*, 720 F. Supp. 720, 734 (S.D. Ill. 1989). Defendants' stereotypic and explicitly discriminatory beliefs about where people with disability should live are unworthy of respect. A preliminary injunction would serve the public interest by furthering the national policy to provide for fair housing for people with disabilities in an integrated, community setting. 42 U.S.C. § 3601.

The State of Illinois licenses CILA providers as part of its duty under *Olmstead v. L.C.*, 527 U.S. 581 (1999) to provide services to individuals with disabilities in the most integrated setting that is appropriate for and desired by the individual. The City's discriminatory interference with RAVE's operations as a CILA provider frustrates the State of Illinois' public policy of deinstitutionalization. The public interest is served by allowing individuals with disabilities to live in integrated residential communities. The integration of CILA residents, like R.H., with nondisabled individuals helps CILA residents improve their independent living skills and educates the public regarding the capabilities of individuals with disabilities. Granting injunctive relief would benefit not only Plaintiffs, but also the City of Anna as a whole.

E. Conclusion

For the foregoing reasons, Plaintiffs pray that this Court order the City of Anna to grant Plaintiff RAVE a permit to construct and operate a single-family home to be occupied by four disabled adults and staff, and for such other and further relief as the Court deems just and proper.

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s/ Thomas E. Kennedy, III
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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2016, I electronically filed this Memorandum in Support of Motion for Preliminary Injunction with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the attorneys of record.

s/Thomas E. Kennedy, III